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Workers' Compensation Legislation in Canada

1982 Edition

Workers' Compensation Legislation in Canada

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Economics and Industrial Relations Research Branch



LABOUR CANADA

May 1982

Published by Authority of the
Honourable Charles L. Caccia,
Minister of Labour,
Government of Canada

Également disponible en français sous le titre
Lois régissant l'indemnisation des victimes d'accidents du
travail au Canada

Additional copies of the book may be obtained from

Publications Distribution Centre
Labour Canada
Ottawa, Ontario -
K1A 0J2

(819) 994-0543

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Cat. No. L 31-36/1982E

ISBN 0-662-12133-3

Printed in Canada

AIO-3804

Foreword

In 1969, the Legislation Branch of Labour Canada published the book "Workmen's Compensation in Canada" which was followed each year by a supplement describing changes in the federal, provincial and territorial workers' compensation legislation.

The book is now out of print and this comparative study which is more concise, has been prepared. The document is up to date as of January 1, 1982.

The study deals with the whole area of compensation for employment injury. It attempts to give a picture as complete as possible of the Canadian workers' compensation system and to show that it embodies concepts of rehabilitation of the injured worker as well as "compensation" in the form of cash and medical benefits for occupational injuries and diseases.

The author discusses the basic principles underlying the system: the principle of liability without fault and payment of compensation benefits in substitution for the right of action against employers for damages; collective liability of employers and compulsory insurance in an exclusive, non-profit, state fund; exclusion of the courts from workers' compensation cases (except for judicial review) and administration by a board whose procedures are kept as simple, speedy and inexpensive as possible; and the continuing jurisdiction of the board to review and modify any decision based on new evidence or changed conditions.

The coverage of the legislation and the nature and extent of the benefits furnished are treated in some detail. One section is devoted to describing the steps which are taken to upgrade pensions awarded in past years at a time when lower earnings and compensation rates prevailed.

Scales of cash benefits provided are set out in tables, permitting comparisons between jurisdictions.

The addresses of the boards are given for those who might have questions concerning the administration of the legislation.

The author of this study is Mr. Michel Gauvin. If you have any comments concerning this publication, he may be contacted at the following address: Legislative Analysis and Research Division, Labour Canada, Ottawa, Ontario K1A 0J2; tel. (819) 997-3920.

We would like to thank Mr. Kenneth B. Harding, Executive Director of the Association of Workers' Compensation Boards of Canada for the very useful information and comments he has provided.

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Workers' Compensation Legislation in Canada

Division of Legislative Powers

Both the Parliament of Canada and the provincial legislatures have the power to enact labour laws. The jurisdiction of the provincial and federal governments arises from the Constitution Act, 1867, Sections 91 and 92. Judicial interpretation of these sections gives provincial legislatures major jurisdiction in the labour field, with federal authority limited to a narrower scope.

Provincial authority is derived from the "property and civil rights" subsection of the Constitution Act, 1867. The right to enter into contracts is a civil right and since labour laws impose certain restrictions on contracts between employers and employees, they fall within provincial authority as property and civil rights legislation. Provinces also have the right to legislate as to "local works and undertakings". Territorial governments have virtually the same legislative powers with regard to labour laws as do the provinces.

Federal jurisdiction in the labour law field arises from the right to regulate certain subjects expressly assigned to Parliament by Section 91 of the Constitution Act, 1867, or expressly excepted from provincial jurisdiction by Section 92. These subjects are of a national, international or interprovincial nature. In addition, Parliament has jurisdiction to regulate works wholly within a province which have been declared by Parliament to be works "for the general advantage of Canada or for the advantage of two or more of the provinces" as, for example, grain elevators, flour and feed mills as well as uranium mines. By virtue of its exclusive power to regulate certain works and undertakings, Parliament has the incidental power to enact labour laws relating to those works and undertakings.

In the absence of federal legislation covering the workers' compensation aspect of employment in respect of certain companies under federal jurisdiction, the courts have ruled, in several decisions involving private railway and shipping companies, that the provinces have legislative authority to provide for payment of compensation to workers of such companies injured by accident in the course of their employment.

However, under its authority to legislate concerning federal government employees, Parliament has passed the Government Employees Compensation Act providing for the payment of employment injury compensation to its employees at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. Such compensation is determined by the Workmen's/Workers' Compensation Board in the province concerned.

Another piece of legislation, the Flying Accidents Compensation Regulations adopted under the Aeronautics Act, provides for the

compensation of federal government employees (excluding members of the RCMP) or their dependants. They apply to an employee who dies or is injured as a direct result of a non-scheduled flight undertaken by him in the course of his duties; a non-scheduled flight is a flight in an aircraft that is not a private aircraft and that is not operated on a scheduled flight. A civil aviation inspector is also covered while conducting a flight test or monitoring commercial air operations. Claimants entitled to benefits under both these regulations and the Government Employees Compensation Act must make an election as to whether they accept compensation under that Act or the regulations.

The Merchant Seamen Compensation Act, administered by the Merchant Seamen Compensation Board, was also passed by the federal government and applies to seamen who are not entitled to coverage under any of the other Workmen's/Workers' Compensation Acts.

In addition to the legislation mentioned above, the federal jurisdiction has created a system under which discharged inmates or their dependent spouses or children may seek compensation in respect of an accident (including an occupational disease) suffered by a prisoner while working or training in a federal penitentiary.

The majority of workers are covered by the provincial Workmen's/Workers' Compensation Acts and by the Workers' Compensation Ordinances in the territories.

Workers' Compensation System

All provinces and territories in Canada have legislation providing for compensation to workers in specified industries who suffer injuries or occupational diseases in the course of, or as a result of, employment. Commonly referred to as the Workmen's/Workers' Compensation Acts (Ordinances in the territories), the laws are either of general application with specified exclusions or they list the industries covered by the legislation, excluding those not listed. Coverage is compulsory for all employment within the scope of the laws. Application for coverage is possible for certain industries as specified in the legislation; the approval of the Workmen's/Workers' Compensation Board is necessary to bring such industries under the operation of the laws.

The Canadian workers' compensation system is based on two main principles: collective liability on the part of employers and compulsory insurance in a state fund, generally known as the Accident Fund. It is, in effect, a mutual insurance scheme in which the employers in a class of industry are jointly or collectively liable for the cost of all accidents occurring in that class.

Compensation costs are charged exclusively to employers. For an employer to require any contribution from employees is an offence against the legislation. The costs of compensation are regarded by employers as a direct cost of production and passed on to the consumer. Thus in final analysis, the costs of compensating workers for employment

injury are borne by society as a whole as a proportion of the price of the goods and services purchased.

Another significant feature of the Canadian workers' compensation system is that each law is administered by a virtually autonomous board - the Workmen's/Workers' Compensation Board (in Quebec, Commission de la santé et de la sécurité du travail) - with full authority to determine all matters arising in the administration of the legislation.

The adjudication of claims for compensation is a primary responsibility of the Boards. For this purpose, they require the worker, employer and physician to submit accident reports and they must obtain the necessary evidence and expert opinion to determine whether an accident or industrial disease is work-caused. If a claim is allowed, the Boards are responsible for determination of the amount and payment of compensation to the worker or his dependants.

The Boards deal directly with the worker or dependants and it is not necessary for these persons to retain counsel.

There being no litigation, the injured worker receives benefits under the legislation with a minimum of delay and expense. Because of the determination of claims by a board instead of the courts, the system has been referred to as an "administrative" rather than an "adversary" system (employee opposing employer).

In Ontario and to a lesser degree in some other jurisdictions, the law provides for some employers to be individually liable for the cost of compensation for work injuries. These are essentially provincial and municipal governments and their agencies, public utilities such as hydro electric commissions and railroads. The above also applies to shipping covered by the federal Merchant Seamen Compensation Act.

A further type of individual liability is provided for in Part II of seven provincial Acts (British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Prince Edward Island). Part II of those Acts is similar to employers' liability law and applies to industries not covered by Part I and not under the jurisdiction of the Board. It sets out the liability of the employer for damages (not compensation) for his negligence or the negligence of his employees in personal injury cases arising in employment outside the workers' compensation scheme. In such cases, damages must be recovered by bringing an action in the courts. Under this Part, certain common law defences otherwise available to the employer are superseded to the benefit of the worker who is not entitled to compensation and whose only recourse is an action at law.

Entitlement to Compensation

The workers' compensation legislation provides that a worker in a covered industry who sustains personal injury by accident "arising out of and in the course of employment" is entitled to compensation; in Quebec, the formula "arising out of or in the course of the work" is

used. When such an accident results in a worker's death, compensation is payable to his dependants. When disability or death is caused by a disease that is due to the nature of the employment, the disease is treated as the happening of an accident.

The only conditions under which compensation is not payable are: (1) where the worker is disabled for less than a stated period or (2) where the injury is attributable solely (in Alberta, attributable primarily) to the serious and wilful misconduct of the worker and does not result in death or serious disablement.

Free medical aid and physical and vocational rehabilitation services are also furnished to an injured worker under the legislation of each province and territory.

All employees of an undertaking to which the legislation applies, whether employed full time or part time, are covered as "workers" under the Act or Ordinance. The term "worker" includes a person who works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise.

Compensation is payable as a matter of right, regardless of negligence on the part of the employer, the worker or his fellow employee. The employee's right to compensation is not affected either by default on the part of the employer in providing information or paying his assessment or by the employer's insolvency. The employer's refusal or failure to furnish payroll returns or to pay assessments may, however, render him liable to penalties.

A worker who is entitled to compensation may not take action against his employer in court for an injury sustained in the course of employment, since the right to benefits under the legislation was substituted for the worker's right to sue the employer for damages. However in most jurisdictions, where the liability of third parties is involved, the worker or his dependants may elect to sue such parties or to claim compensation from the Board. In the event of the latter election, the Board is subrogated to the rights of the worker or his dependants.

Monetary Benefits Under Workers' Compensation Laws

In all jurisdictions, cash benefits are payable from the Accident Fund to disabled workers protected by the legislation or to their dependants.

Benefits to Disabled Workers

Most compensation schemes provide for a waiting period between the injury date and the commencement of eligibility for benefits. In many jurisdictions, entitlement begins on the day following the injury but with no monetary benefits payable for the day or balance of the day on which the injury occurs. There are, however, variations to this in Alberta and Quebec.

In Alberta, if a worker is disabled for all or part of the day of the accident, the employer is required to pay minimum normal net wages for the full day. The same applies if the disablement continues beyond the day of the accident; in this case, the Board pays compensation from the following working day.

In Quebec, the Workmen's Compensation Act obliges the employer to pay an employee suffering from a temporary total disability following a work accident or caused by an aggravation subsequent to such an accident, an amount equal to the compensation for the initial disability. The amount must be paid at the time the employee would ordinarily have received his wages and covers the first five days on which the worker is totally disabled to work, not counting the day on which the accident occurred. If the claim of the worker for compensation is subsequently deemed well founded, the Quebec Commission will reimburse the employer any sum paid pursuant to the provision just described. Otherwise, the employer may demand reimbursement from the worker.

In Nova Scotia, there is a three day waiting period before entitlement. After three days, including the day of accident, compensation is payable from and including the day of accident.

In New Brunswick and Prince Edward Island, if a worker is disabled for longer than the day of accident, compensation is payable from that day. If he is only disabled on the day of accident, no compensation is paid.

In all instances, a waiting period does not affect the worker's right to medical aid from the date of injury.

In all instances, the benefits payable to disabled workers are based on a certain percentage of average weekly earnings determined by the Board concerned, up to a maximum of 75% of gross earnings or in Alberta, New Brunswick and Quebec, up to 90% of net earnings (gross earnings less deductions for income tax, unemployment insurance premiums and Canada or Quebec Pension Plan contributions). In most jurisdictions, compensation is based on the degree of physical impairment with provisions for earnings loss related benefits if this is more equitable. However, in New Brunswick and Saskatchewan (as well as Quebec for silicosis and asbestosis) a lump sum is paid for permanent functional impairment and there is an income maintenance system by which the disabled worker is assured of continuing benefits related to the loss of earnings. Under this system, the calculation of compensation is based on the estimated difference in earnings before and after the disablement.

In all jurisdictions, a ceiling is placed on the annual rate of earnings of workers which is insurable. An employee whose rate of earnings are above the ceiling is regarded, for purposes of calculating a compensation award, as earning the amount of the ceiling. Similarly, his employer is assessed on his earnings only up to the amount of the ceiling.

Payments continue for the duration of the disability or of the estimated loss of earnings, as the case may be, and, in most cases, are subject to a minimum amount specified in the legislation. When there is permanent disability, a life pension is paid (except in New Brunswick and Saskatchewan) or, when disablement is slight, a lump sum payment is made.

In New Brunswick and Saskatchewan, benefits to injured workers continue for the duration of the loss of earnings or to age 65, whichever comes first. In the case of workers of 63 years of age or over at the time of the injury, it is possible for them to continue to receive compensation for a period not exceeding two years.

In those two provinces, where compensation is paid to a worker for a period exceeding 24 consecutive months, the Board sets aside an amount equal to a percentage of the compensation paid. That amount is used to provide a pension for the worker at age 65. The Saskatchewan legislation provides that, in certain circumstances, where undue hardship would be created, the income of pensioners of 65 or over is supplemented.

In New Brunswick, any compensation payable to a worker is reduced by the amount that person is entitled to receive relative to the injury under the Canada Pension Plan. In Saskatchewan, C.P.P. benefits are considered to be earnings for compensation calculations after the first 12 months of loss of earning capacity; however, the reduction does not apply in respect of minimum amounts of compensation.

It is important to note that, in all jurisdictions, the compensation paid to a disabled worker is not taxable.

In case of fatal accident, cash benefits are provided for the widow or widower (in British Columbia and Newfoundland only invalid widowers are eligible) and dependent children of the deceased worker or other persons who were wholly or partly dependent upon his earnings at the time of his death or who, but for the incapacity due to the accident, would have been so dependent.

Benefits to Dependants

Except in Ontario, Nova Scotia, Prince Edward Island and the Northwest and Yukon territories where monthly payments are fixed by law, benefits to dependants, in fatal cases, are calculated according to the worker's earnings. In Alberta and Manitoba, the dependent widow(er) is entitled to the permanent total disability pension the deceased worker would have received if he had survived and had suffered from such a disability. The same applies to British Columbia where the full permanent total disability pension is paid or a portion of it depending on the number of dependent children and the age of the widow or invalid widower. In Quebec, the surviving spouse and/or the other eligible dependants receive a certain percentage of this permanent total disability pension according to the number of persons which have suffered a pecuniary loss. In Newfoundland, depending on age and the number of dependent children, a spouse is entitled to 75% of the monthly payment made in cases of temporary total disability. Finally, in New Brunswick

and Saskatchewan, the dependent spouse receives benefits equal to a certain percentage of the deceased worker's average earnings; in New Brunswick, the amount is equal to 80% of net earnings and in Saskatchewan, it is at least 75% of gross earnings.

In addition to a monthly pension, a dependent widow, or widower (or invalid widower as the case may be) receives an immediate lump sum payment (this lump sum is substantial in Newfoundland), an allowance for funeral expenses (in Saskatchewan, the allowance is included in the lump sum) and a further sum where the worker's body has to be transported a considerable distance for burial.

In the jurisdictions where the benefits are based on the total disability pension or on the deceased worker's earnings, the monthly payment is normally made for both the dependent spouse and children. In the jurisdictions where the benefits are predetermined and in British Columbia, where there are more than two eligible children, a monthly allowance is payable for each dependent child to the age limit fixed by law or, in some jurisdictions, for the duration of a child's education (see page 35, footnote number 2). In all instances, if a child's remaining parent dies, he becomes eligible for the usually higher monthly payment provided for an orphan.

Except in Alberta where invalid children are treated in the same way as other children, children who are invalid are entitled to the benefits provided for a dependent child, regardless of age and in most jurisdictions, for as long as they remain invalids or until they die. The legislation of Newfoundland, Prince Edward Island, Quebec and the Yukon Territory states, however, that payments made in respect of an invalid child are to be prolonged only so long as the Board considers that the worker would have continued to contribute to the child's support.

Except in British Columbia (for certain cases) as well as in Alberta, New Brunswick, Newfoundland, Quebec and Saskatchewan, the pension to an eligible dependent spouse is payable for life, unless he/she remarries. The right to a pension ceases upon remarriage but (except in Alberta and Quebec) that person is entitled, in lieu of the periodic payments, to a lump sum equivalent to the monthly allowance for one or two years or other amount as is specified in the Act or Ordinance (see page 35, footnote number 4). The children's payments continue as before.

In British Columbia, where the dependent spouse is a widow who at the time of death, is not an invalid and is under the age of 40 years, and there are no dependent children, or is a widower who is not invalid, a lump sum is paid in lieu of a pension.

In Alberta, where there is a dependent spouse and dependent children, the pension is paid until the month in which the youngest dependent child reaches the age of 18, at which time a 5-year term pension is payable. At that time, the spouse who is gainfully employed receives a full pension for the first 12-month period, 80% for the second

such period, 60% for the third, 40% for the fourth and 20% for the fifth and last period. In the case of the dependent spouse who is not employed, the Board may continue payment of the full pension until that person becomes gainfully employed or a period of 60 months has elapsed after the month in which the child reached the age of 18, whichever occurs first. At that time, or possibly before if the spouse neglects or refuses to accept available vocational rehabilitation services, the decreasing 5-year term pension takes effect.

When there are no dependent children, the surviving dependent spouse who accepts vocational rehabilitation services provided under the legislation, is entitled to a full pension until he or she becomes gainfully employed or until the expiration of a period of 60 months after the death of the worker, whichever occurs first. At that time or in the month following the worker's death if the spouse is already employed or neglects or refuses vocational rehabilitation, the Board starts to pay the decreasing 5-year term pension.

In addition, the Alberta Act provides safeguards and flexibility for those dependent spouses only partially self sufficient and gives the Board the power to continue the payment of benefits to those who cannot be trained because of age or infirmity.

In New Brunswick, the dependent spouse's pension is payable up to age 65. Also, the payment of the benefits may be reduced if when combined with the net earnings of the spouse, they exceed 90 per cent of the net family income as defined in the Act. At age 65, the spouse benefits from a pension scheme established by the Board on the first day payments started to be made.

As mentioned earlier, in Newfoundland, a substantial lump sum is paid to any eligible surviving spouse following the worker's death. The ongoing benefits are paid in the following way:

<u>Status of spouse at the time of death</u>	<u>Monthly benefits</u>
35 years or under with no dependent child	none
" " " " with dependent child	paid until youngest child reaches age 16
over 35 and under 50 with no dependent child	proportion according to age of pension payable if spouse had been over 50; payable until age 65
" " " " " with dependent child	paid until youngest child reaches age 16 and then as if there had been no children

50 years and over or invalid

paid until age 65 unless
circumstances warrant
further benefits

In Quebec, the surviving spouse under 35 as well as the spouse who is separated, divorced or whose marriage has been cancelled by a judgment of the court and who, at the time of the accident, was entitled to receive alimony from the worker, is no longer considered to be a dependant 5 years after the worker's death when this person is without children and is not an invalid. Also in Quebec, a spouse loses the right to compensation in case of remarriage or cohabitation with another person for 3 years (1 year if a child is born of their union) and they are publicly represented as consorts. The right to an indemnity is not extinguished, however, before the expiry of a delay of 5 years after the death of the worker.

In Saskatchewan, compensation to a dependent spouse is paid for a period of five years or until remarriage, whichever occurs first. However, compensation is extended until the youngest dependent child of the deceased worker is 16. Also, the payment of benefits may continue beyond five years where the Board believes that an undue hardship would otherwise exist.

In all jurisdictions, parents and other dependants who were wholly or partly dependent on the worker for support may be compensated for their pecuniary loss. Payments, in these cases, are generally continued only so long as the Board considers that the worker, if he had lived, would have contributed to the support of the dependant.

Generally speaking, a foster parent (the law of B.C., Nfld. and N.S. refers to a foster mother) who takes care of a family of orphans in a manner satisfactory to the Board is entitled to receive monthly payments of compensation as if he/she were the surviving spouse of the deceased worker. Payments to a foster parent are discontinued when all the children of the household cease to be entitled to compensation. In Saskatchewan, a foster parent receives a monthly allowance for the child and a sum that the Board may determine until such child reaches the age of 16. Also, in Alberta, New Brunswick and Quebec, the benefits to which orphans are entitled are paid to a person who acts as guardian. In the latter two provinces, the legislation provides for direct payments to such dependent children when they are old enough and capable of handling their own affairs.

In all provinces (except in New Brunswick) and in the two territories, the legislation states that a common-law wife may receive a widow's pension. In several of these jurisdictions, a common-law husband could also be entitled to payments. Payment of benefits to such persons is authorized, in the Board's discretion, if there is no dependent widow(er) and if the common-law spouse has lived with the worker for a specified period immediately before his/her death (see page 35, footnote number 1). However in Alberta, Nova Scotia, Ontario and Quebec, if all the conditions are met, payments are not made at the Board's discretion but as a matter of right. Also, in Quebec, the requirement that there be

no dependent widow(er) in order for the common-law spouse to become eligible to compensation, does not exist. In Saskatchewan, if a worker leaves a dependent common law spouse and a partially dependent spouse, the Board may provide compensation to both according to the loss suffered.

In British Columbia and New Brunswick, benefits received under the Canada Pension Plan as a result of the death (or relative to the spouse's retirement in B.C.) are deducted from the compensation paid to dependants. In Saskatchewan, the benefits are reduced by deeming C.P.P. benefits to be earnings after the first 12 months of payment but this reduction does not apply to minimum amounts of compensation.

In all instances, once a compensation claim has been allowed, the injured worker or the dependants remain under the continuing supervision of the Board.

As trustee of the Accident Fund and in its role of guardian of the worker or dependant, the Board has discretion under certain circumstances, as to the person or persons to whom compensation is to be paid and may suspend or withhold or even refuse payment of benefits.

Charts attached in appendix to this document set out the benefits to which workers or dependants are entitled in each jurisdiction. Details are also given concerning differences between the various schemes in force throughout the country.

Upgrading of Pensions

The maximum level of insurable earnings and various types of benefits payable to disabled workers or eligible dependants are increased periodically in an effort to keep the payments in line with the cost of living.

In order to reflect changes in the level of workers' average earnings, the British Columbia, Manitoba, New Brunswick, Quebec, Saskatchewan and the Yukon Territory legislation contains an adjustment formula providing for automatic increases on January 1 of each year, of the earnings ceiling which is used in the calculation of the compensation payable to disabled employees. In other jurisdictions, ad hoc adjustments are made periodically to maintain the relationship between the maximum benefits payable and average wages earned in the jurisdiction.

In New Brunswick, Quebec, Saskatchewan and the Yukon Territory, the legislation provides for annual adjustments applying to the disability benefits being received by the workers; this is also true in British Columbia where there are semi-annual increases and in Nova Scotia where an annual raise applies to permanent disability awards. The adjustments are based on changes in the cost of living or, in New Brunswick, on changing wage levels.

In New Brunswick, Nova Scotia, Quebec and the Yukon Territory, benefits provided especially for dependants are upgraded in relation to the increase in average wages or the Consumer Price Index, effective January 1 of each year. The same applies to British Columbia where there is a raise on July 1 and on January 1.

When such automatic increases do not exist, the legislature or the Lieutenant Governor in Council concerned adopts legislative measures, from time to time, to raise the continuing benefits being paid to workers and dependants. Generally, there are benefit increases applicable to all existing pensions, regardless of the date of the accident.

Medical Aid

A worker who suffers personal injury by accident or disease resulting from employment in an industry subject to the legislation is entitled to all necessary medical aid. Medical aid and allied benefits are provided for as long as needed regardless of any waiting period.

As a major objective of the compensation process is the rehabilitation of the injured worker, the Boards seek to ensure that every such person receives the best possible medical care.

Medical aid is provided or arranged by the Board or as it may direct or approve, that is, all medical aid is subject to the Board's direct supervision and control.

"Medical aid" includes medical, surgical and dental care, hospitalization and skilled nursing services, medicines, prosthetic appliances, including their maintenance, and the replacement and repair of dentures and eyeglasses. Matters not specifically mentioned in the legislation are within the discretion of the Board.

The legislation states that the Board has full discretion as to the necessity, character and sufficiency of any medical aid furnished. Any questions or disputes are to be determined by it.

All medical aid costs in industries within the collective liability system are paid from the Accident Fund. Individually liable employers in Ontario, listed in schedule II of the Act, pay for medical aid for their workers through deposit accounts with the Board.

A worker is required to submit to any medical examination ordered by the Board. If he refuses to undergo, or in any way obstructs, such an examination, his right to compensation, may be suspended, in the discretion of the Board, until the examination has taken place.

The Act of all provinces (except Alberta, Ontario and Saskatchewan) and the Ordinance of the Northwest Territories specifies that the Board may approve an employer's scheme for furnishing medical aid to his employees, in place of the medical aid provided for in the legislation. An employer's medical aid plan may be approved, however, only if, after considering the wishes of both workers and employer, the

Board considers it to be at least as favourable to the workers as the provisions of the legislation. In British Columbia and Manitoba, the Act states that employers' schemes may be approved, subject to such conditions as the Board may impose.

The federal Merchant Seamen Compensation Act, which applies to seamen who are not within the scope of any provincial workers' compensation legislation, provides for free medical aid from the date of disability except where they are entitled to medical aid under the Canada Shipping Act or other similar legislative provisions.

First-Aid

All jurisdictions have legislation requiring employers to provide and maintain, at their own expense, first-aid equipment and services.

These services and equipment are generally specified in detail in the legislation. They vary according to the number of workers employed and in certain instances, according to the hazard of the industry and the distance between the place of employment and the office of a doctor or a hospital.

The first-aid requirements laid down are minimum requirements. Employers are required to provide first aid kits, the contents of which vary with the number of workers employed, and, where the number of employees warrants, to install a first aid room, equipped and attended in accordance with the requirements of the Board and/or the department or body responsible for occupational health and safety.

The legislation of all jurisdictions contains a requirement that employers must have available a means of transporting injured workers to the nearest hospital or doctor.

Rehabilitation

The Canadian workers' compensation system is rehabilitation-oriented. The objective of the program is that injured workers should be, to the greatest extent possible, restored to health and physical function in order to return to gainful employment. The aim in each individual case is the maximum reduction of permanent disability in the shortest possible time. To this end, the legislation provides for unlimited medical care and for physical and vocational rehabilitation.

The legislation of all jurisdictions gives the Board very wide powers in the field of rehabilitation. The Board's authority is usually stated in these terms: "To aid in getting injured workers back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it deems necessary or expedient."

Vocational rehabilitation consists of vocational guidance, testing, counselling, assistance in finding suitable gainful employment and retraining, where advisable.

In Alberta, British Columbia, Newfoundland and Saskatchewan, the Board may also provide counselling and vocational assistance to the dependent spouse of a deceased worker in order to help that person enter the labour force and become self-sufficient.

Although the Board is not obliged to find work for a worker whose disability prevents him from returning to his former occupation, it makes every effort to assist him in re-establishing himself in employment.

Under Part III of the Canada Labour Code which applies to industries that come within federal jurisdiction, no employer may dismiss or lay off an employee solely because of absence due to illness or injury. In order to take advantage of this provision, the employee must have completed three months of continuous employment prior to his absence and the period of absence may not exceed the period during which the employee is undergoing treatment and rehabilitation at the expense of a workers' compensation authority. If requested in writing by the employer, within 15 days after his return to work, the employee must provide an adequate medical certificate.

In the other jurisdictions, there is no legal obligation for an employer to rehire an injured worker. However, many employers feel a moral responsibility to rehire workers who have been disabled in their employment and some collective agreements make this a requirement.

Industrial Diseases

The legislation of all provinces and territories gives workers the right to compensation for industrial diseases, subject to certain conditions, as if the disease were the happening of an accident. The legislation varies in the conditions laid down and in the interpretation that is placed upon the term "industrial disease", but in most cases, it covers diseases which are peculiar to or characteristic of a particular industrial process, trade or occupation.

Except for Manitoba, Saskatchewan, the Yukon and the Northwest Territories, the legislation also contains a schedule of industrial diseases and the industrial processes to which they are related and for which a rebuttable presumption of relationship is provided. In other words, if a worker is disabled by a disease listed in the schedule and was employed at or immediately before the date of the disablement in a process set opposite the disease in the schedule, the disease is presumed to have been due to the nature of the employment, unless the contrary is proved.

Diseases and corresponding occupations are placed in a schedule when it is established that the disease is usually due to that occupation or process and that its incidence outside that occupation is rare. A

worker benefits from the scheduling of an industrial disease; since, if he contracts that disease after having been engaged in the associated work process, he automatically becomes entitled to compensation unless proof is brought forward that the disease was not of occupational origin.

The Board, the Lieutenant Governor in Council or the Board with the approval of the Lieutenant Governor in Council, as the case may be, is empowered to add diseases to the schedule.

In all jurisdictions, however, a disease contracted by a worker may be compensable, even though it is not included in a schedule, if it is shown to have been caused by the nature of his employment. In such case, the claimant does not have the benefit of the statutory presumption applicable to scheduled diseases but the question of causal relationship is established by the Board on a similar basis as for injury. Where the Board decides that a disease contracted by a worker is peculiar to or characteristic of his occupation, the disablement is compensable under the same terms as the happening of an accident.

In several jurisdictions, unless a worker is disabled by reason of the disease from earning full wages at the work at which he was employed, no compensation is payable. However where the disease is incurable, compensation may be awarded without wage loss.

In four jurisdictions - Alberta, Nova Scotia, Prince Edward Island and the Northwest Territories - in order to be entitled to compensation for an industrial disease, the worker is required to have been employed in the employment to which the disease is attributed in the course of the 12 months previous to the disablement. In Alberta and Prince Edward Island, the above provision applies only to the diseases which have been declared to be industrial diseases by the Act or by regulations; in Nova Scotia and the Northwest Territories, it applies with respect to scheduled diseases and also to any disease recognized as such by the Board.

Exceptions from the 12-month time limit are allowed for radiation disabilities in Nova Scotia.

In the British Columbia, New Brunswick, Newfoundland, Ontario and Quebec Acts, there is no requirement that the worker must have been engaged in the employment within the 12 months preceding his disablement.

In Ontario and Quebec, to benefit from the presumptive clause related to scheduled diseases, the worker must have been a resident of the province for the three years preceding his first disablement (preceding his claim to suffer from such a disease in Quebec), unless the Board is satisfied that the disease is not due to any other cause than his employment within the province.

The New Brunswick and Prince Edward Island Acts make it clear that an industrial disease is compensable only where it is due to employment within the province.

No special conditions are laid down in the Saskatchewan legislation for the payment of compensation for an industrial disease; this is also true for Manitoba, the Yukon and the Northwest Territories except in the case of silicosis.

All the Acts except those of British Columbia, Alberta, Manitoba and Saskatchewan forbid the payment of compensation in any case where the worker at the time of entering into the employment "wilfully and falsely" represented himself as not having previously suffered from the disease. In New Brunswick, Ontario and Quebec, however, a worker is only ineligible for compensation if he made such a statement in writing.

Coverage

In all provinces, except Alberta, New Brunswick, Quebec and Saskatchewan, the coverage of the Workmen's/Workers' Compensation Acts is limited to enumerated employments. Coverage of any worker under the statute is therefore determined by reference to the industry, occupation or type of work in which he is engaged.

In Alberta, the Act applies to all industries in the province except those designated by the regulations as being exempt. The same applies to New Brunswick and Saskatchewan where certain industries are excluded by a provision of the Act or by regulations. In Quebec, the legislation covers all industries or part of an industry with the exception of domestic services and athletes participating in sports events.

In the two territories, the Ordinance covers all industries with some exclusions.

The laws were initially made applicable to the industrial employments considered to be most hazardous. Coverage has, however, been extended to other employments with less risk of work injury, with the result that the range of covered industries is now very wide, particularly in some provinces.

Generally speaking, the legislation applies to employment incidental to or connected with the industries and undertakings which are within the scope of the Act or Ordinance. All employees in an industry under the legislation, whether full time or part time, are covered, including office workers and supervisory personnel.

Industries and occupations not within the compulsory coverage of the Act may be brought within it by determination of the Board, or in two of the provinces - Newfoundland and Saskatchewan by the Lieutenant-Governor in Council, on the recommendation of the Board.

In addition to compulsory coverage, there is provision in all provinces for elective coverage, at the discretion of the Board. An employer engaged in an undertaking not within the scope of the Act may apply to the Board to have his workers covered, whereupon, on payment of

the required assessment, coverage may be granted. In this way, employers in non-covered industries may avail themselves of the protection of the law.

Most industries which are not within the scope of the legislation, may apply for voluntary coverage.

Federal government employees (excluding members of the Armed Forces and the Royal Canadian Mounted Police) and employees of most Crown corporations, government boards and agencies are covered by the Government Employees Compensation Act, a federal statute which is described briefly in the first section of this document (Division of Legislative Powers).

In Alberta, New Brunswick, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, there is a special Act dealing with compensation for blind workers. These laws were passed to increase the employment opportunities of blind workers who might otherwise be refused employment on the ground that their accident rates would be high. The statutes make provision for payment from public funds of the costs, or the greater part of the costs, of compensation for an accident occurring to a blind worker. The Quebec Workmen's Compensation Act contains similar provisions which apply to visually handicapped workers.

Reporting of Accidents and Time Limits for Filing Claims

In order to make a proper adjudication of whether a worker is or is not eligible for compensation, the Board must have a complete and detailed picture of what occurred to cause the injury. To this end, the employer, worker and attending doctor are required to report to the Board. Reports must be submitted promptly on a special form available from the Board.

In all provinces and in the territories, the legislation requires the injured worker to notify his employer of his accident "as soon as practicable" after it occurs, but contains a saving clause to the effect that, under certain conditions, failure to give such notice does not bar payment of compensation. In Manitoba, notice must be given "as soon as practicable, but in any case not later than 30 days after the happening of the accident". Further, under all of the provincial Acts, except those of Alberta, British Columbia and Manitoba, notice must be given before the worker has voluntarily left the employment in which he was injured. The employer must be notified at once to enable him to investigate the accident and to send his report to the Board.

Depending on the particular Act or Ordinance, failure to give notice, or a defect or inaccuracy in a notice, may be excused by the Board on one of the following grounds: (1) for some sufficient reason notice could not have been given; (2) the employer or his superintendent or agent in charge of the work had knowledge of the injury; (3) in the Board's opinion, the employer's position was not prejudiced; or (4) the Board is of the opinion that the claim is a just one and ought to be allowed.

In Alberta, New Brunswick, Ontario, Quebec, Saskatchewan and the Northwest Territories, the legislation specifies that the employee's notice to the employer must also be sent to the Board.

The employer is required to report to the Board any accident involving time-loss compensation or medical aid. In the Yukon Territory, he must report immediately, in Alberta within 24 hours after the accident comes to his knowledge or notice, in Quebec within two days, and in all other provinces and in the Northwest Territories, within three days. Without the employer's report, the Board has no confirmation that the injury occurred at work.

There are teeth in the legislation to ensure that accidents are reported to the Board, and in three provinces - British Columbia, Quebec and Saskatchewan - failure to do so may make the employer responsible for the cost of compensation and medical aid in respect of an accident claim.

The doctor's report advising the Board that the accident has resulted in disablement and indicating the nature and extent of the disability, is required in all cases where time-loss compensation is involved.

The provincial and territorial legislation sets a time limit for the filing of claims for compensation but, as with notice of an accident, the Board is given discretion, in certain circumstances, to allow a claim despite failure to comply with the statutory time limit. In most jurisdictions, it may do so where, in its opinion, the employer has not been prejudiced or the claim is a just one and ought to be allowed.

Subject to provisions enabling the Board to exercise its discretion in particular cases, the legislation requires claims by workers or dependants to be filed within the following time limits:

The Northwest Territories	- within one year after the accident or three years after the death
Alberta, British Columbia, Manitoba and the Yukon	- within one year after the accident or death
New Brunswick	- within one year after the accident or 6 months after the death
All provinces not mentioned above	- within 6 months from the happening of the accident or within 6 months from the date of death

Review of Claims

Since, in most jurisdictions, there is no appeal to the courts from Board decisions (the exceptions are described below), the Boards freely review their decisions and in many cases, a review or appeal procedure has been established within the administrative mechanism.

In the province of Quebec, a person may appeal from a decision of a review board of the Commission to a body unconnected with the Commission - the Social Affairs Commission.

The exceptions mentioned in the previous paragraph are contained in the Acts of New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island which allow an appeal to the Supreme Court of the province (in New Brunswick - the Court of Appeal and in Nova Scotia - the Supreme Court, Appeal Division). The right of appeal varies with the terms of the Act concerned. In the four provinces, it is limited to questions of law or of the Board's jurisdiction (or of mixed law and fact in Newfoundland).

Further, in Nova Scotia and Prince Edward Island, an appeal may be taken to the Court only with the permission of a judge of that Court upon petition being made within 30 and 15 days respectively, from the date of the decision appealed from. The New Brunswick Act grants a direct right of appeal, but within 10 days of being provided by the Board with a statement of the facts and the grounds for the Board's decision, constituting the record on the appeal, the appellant must apply on summons to a judge of the Court to determine and order that such record discloses a question of law or jurisdiction.

In each of these provinces, the Board (in Nova Scotia - the Workers' Compensation Board, Appeal Board) may, of its own motion, submit a stated case to the Court for an opinion upon any question of law (in Newfoundland and New Brunswick, upon any question of law or jurisdiction). The Newfoundland Board may refer also a stated case to the Court upon the application of any party or at the request of the Lieutenant-Governor in Council.

In general, special procedures are also provided in the legislation to resolve a purely medical dispute.

Reasons for a decision are given to the appellant and even when it is final, the claim is not closed. The Board at any time will reconsider any matter with which it has dealt, on the submission of new evidence, on the aggravation of an injury or for some other good reason.

In several instances, the services of a compensation counsellor whose title may differ according to the jurisdiction, are available to an injured worker to assist him without fee in preparing and presenting a claim for compensation.

Third Party Actions

A worker who is entitled to compensation under a workers' compensation scheme, may not sue his employer for an injury incurred at work, since one of the fundamental principles underlying the compensation system is that the benefits to which a worker is entitled are in lieu of all rights of action against the employer for damages at law. Further, the Acts of all provinces and the Ordinance of the Yukon Territory abolish any right of action by a worker, his dependants or his employer in respect of

an accident against an employer in any industry within the scope of the compensation scheme when the accident arises out of and in the course of the business of the latter.

Notwithstanding what is mentioned above, in Quebec, a worker or dependant may exercise a right of action against an employer whose industry is covered by the legislation, other than the worker's employer, when such person has committed an infraction or a criminal act under the Criminal Code. This is also true in Nova Scotia if the accident happens to a worker as a result of the driving of a registered motor vehicle. Also, in New Brunswick, the legislation permits the taking of an action against an employer who is not the worker's employer where the worker sustained an injury or was killed while being transported or as a result of an accident involving a motor vehicle.

In all provinces (except Nova Scotia) and in the Yukon Territory, a worker or a dependant has no right of action for damages against a worker employed in an industry in which employees injured at work are eligible to be paid compensation under the legislation.

In British Columbia and Nova Scotia, the Act prohibits the taking of action "against an employer, his servants or agents". This gives freedom from liability to suit to representatives of the employer who have managerial or supervisory duties, however, in Nova Scotia, the worker's rights to take action against another worker are preserved. In the Northwest Territories, a worker or dependant is precluded from suing a fellow worker of the employee but may sue a worker of another employer.

From time to time, however, workers are injured due to the negligence of persons other than their own employers or persons who, as mentioned above, cannot be sued. In such circumstances, they may take action against the person alleged to be responsible for the injury. These cases are referred to as third parties actions.

In all jurisdictions, except Alberta, Saskatchewan and the two territories, if a worker suffers injury in an accident occurring in the course of his employment for which he is entitled to compensation, and the circumstances are such as to entitle him to take court action against a third party, he has the option of claiming compensation or of bringing an action.

If he brings such action, the injured worker is always protected up to the full amount of compensation to which he is entitled. If he chooses to sue and recovers less than his compensation benefits would have been, he is entitled to compensation under the Act to the amount of the difference. In Manitoba, in such circumstances the Board may take possession of the money recovered through the action and apply it towards the periodic payment of compensation.

If the injured worker chooses to claim compensation, the Board becomes subrogated to his rights. This means that the worker's right of action against the third party passes to the Board. On subrogation, the

Board has full power to determine whether it will sue the third party or make a compromise settlement.

Under the Ontario Act, if a worker elects to claim compensation under the legislation, in an industry in which the employer is responsible for the payment of compensation, the employer is subrogated to the rights of the worker or his dependant and may sue to recover damages from the person responsible for the accident.

In Quebec, a beneficiary is expressly given the right, even though he has elected to claim compensation under the Act, to sue a third party under the common law (any person other than the worker's employer) to recover the difference between the amount of the compensation received by him and the amount of the loss actually suffered.

The Alberta and the territorial legislation does not give the injured worker the right of election. Where an accident occurs in the course of his employment entitling him to compensation under the law, and the circumstances are such as to entitle him to an action against a third party, the Board is subrogated to all his rights or those of his dependants against such third party. However, with the consent of the Board, the worker may take action against the third party.

In Saskatchewan, a worker or dependant is paid compensation and may also bring an action. Where compensation is received, the Board is subrogated to all rights of recovery and may bring an action either alone or jointly with the person to whom or for whose benefit payments are made.

Accidents Occurring Outside the Jurisdiction

All provinces and the two territories have legislation providing for the payment of compensation to workers who are injured in accidents outside its boundaries, but who are hired by an employer in the jurisdiction and would have been entitled to benefits had the accident occurred in the province or territory. However, conditions are laid down under which such protection is granted.

The determining factors are usually the employer's place of business, the residence and usual place of employment of the worker, the nature of the employment and the period of time during which the worker is employed outside the province or territory.

All the Boards, except for Nova Scotia and Prince Edward Island, where the legislation does not provide for it, are parties to an interjurisdictional agreement to avoid employers being assessed in more than one jurisdiction on a worker's wages as a result of a worker's right to claim in more than one jurisdiction. The agreement provides that the Boards will levy assessments only on earnings earned in their jurisdiction. The agreement does not restrict the worker's choice to claim benefits in his home jurisdiction or that in which the injury occurs.

Non-Resident Workers and Dependants

In all provinces and territories, the legislation provides for the payment of compensation to eligible workers or their dependants who reside outside Canada but, in most cases, permission to leave must be obtained from the Board and other conditions may be imposed such as the requirement to prove their identity and the continuance of the disability.

Except in Alberta, British Columbia, Ontario, Quebec and Saskatchewan, the benefits to non-resident dependants are paid on a reciprocity basis. In other words, the dependants have a legal right to receive benefits only if residents of the province or territory concerned who are in the same situation in that country, would be entitled to compensation under the workers' compensation law applying to them. This reciprocity requirement also applies to the case of a disabled worker under the legislation of New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island.

In the cases where compensation is payable on a reciprocity basis, as mentioned above, the payments may be reduced to what is paid under the law of the country, if it is less than what is provided for in the particular province or territory. In New Brunswick, the Act takes into consideration the higher standard of living in Canada than in some other countries and permits the Board to adjust the amount of compensation on this basis.

In most of those jurisdictions, if the reciprocity requirement is not fulfilled, the Board may award compensation as it considers appropriate.

System of Financing Workers' Compensation

Wage records, payroll estimates and assessments

For the purposes of each Act or Ordinance, every employer within its scope must keep accurate wage records in such detail as may be required. The records must be produced to the Board and its officers upon request.

Failure to keep proper payroll records renders an employer liable to a penalty. The employer may also be penalized for failure to permit examination of books and records or obstructing or hindering the making of an examination or inquiry.

Every employer carrying on an industry under the legislation is required to transmit to the Board on or before a prescribed date at the beginning of each year a certified statement of the amount of wages paid by him during the previous year, and an estimate of his payroll for the current year.

An employer who, during the year, establishes a business to which the legislation applies, must notify the Board within a prescribed period and submit an estimate of his payroll for the remainder of the year.

In the payroll statements submitted to the Board for the purposes of assessment, salaries and wages are to be included only to the extent of the ceiling on earnings laid down in the legislation. That is, the wages of any worker in excess of the ceiling are to be deducted from the amount of the payroll.

For purposes of assessment, the industries within the collective liability system in each province and territory, are divided into classes, according to the type of business or end product involved.

On the basis of payroll returns, the Board assesses and collects from the employers in each class sufficient funds to pay for the accidents happening in the class during the current year, including the maintenance of adequate reserves for the payment of compensation in future years, and provision for administrative expenses.

Assessments are levied and collected at a provisional rate upon the estimate of payroll which the employer gives the Board, or, if he furnishes no estimate or if the Board deems his estimate too low, upon an estimate made by the Board. After the end of the year, the rate is adjusted where the accident experience of the class or group calls for it and the final rate is applied to the actual payroll for the year.

For the purpose of assessment, each industry is regarded as a unit, and, except as expressly provided in the Board's rating provisions, its different operations are not to be segregated or separately rated. Where it is so provided, segregation is compulsory and the employer must keep separate payroll records for each type of work.

Default on the part of an employer in filing his payroll return renders him liable:

- (1) to be assessed on an arbitrary basis fixed by the Board;
- (2) to a penalty for delay in reporting;
- (3) to pay the full cost (or in some provinces a substantial part of the cost) of any accidents to his workers while he is in default.

Default on the part of the employer in making the required returns to the Board does not affect the payment of compensation to a worker for an accident that happens during the period of default, but, as indicated above, it renders the employer liable to penalties.

The payment of such penalties may be enforced in the same manner as the payment of an assessment. In all provinces and in the territories, the Board may relieve the employer from liability, if satisfied that the default was excusable.

Under most of the statutes, an additional percentage of assessment or interest, as fixed by the Board, may be charged or in certain instances, a fine may be imposed where the payroll has been underestimated.

In each province and territory, failure to pay any assessment, a special assessment or any portion of an assessment by the due date may result in a penalty being imposed, by way of an additional percentage of the amount for which the employer is in default.

In addition to any other penalty, the cost of an accident occurring during any period of delinquency may also be charged to the employer in British Columbia, Newfoundland, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan. In the Northwest Territories, the employer may have to pay to the Board a sum of money which does not exceed the amount of compensation payable. The legislation of the Yukon is similar except that the maximum additional penalty has been set at one half the cost of the accident subject to a specified upper limit.

Where the Board is unable to collect the assessment owing, it enforces collection by legal means. These legal means vary somewhat from one jurisdiction to another, however, in all provinces and territories, the Board may issue a certificate stating that an assessment has been made, that it is payable by the person named in the certificate and that a specified amount remains unpaid, and the certificate may be filed with the clerk or registrar of the appropriate court. When so filed, it becomes an order of the court and may be enforced as a judgment of the court.

Contractors and Subcontractors - Liability for Assessments

In every province and territory, where work is done under contract for an employer carrying on an industry under the legislation, the contractor or subcontractor is liable for payment of the assessments due to the Board in respect of the work, but the employer for whom the work is done (the principal) is held responsible for payment, should the contractor and subcontractor default. The employer letting the contract must see, therefore, that the contractor or subcontractor has paid his assessment; otherwise, he can be held liable for payment.

However, there is an exception to the above. Concerning work within the scope of the legislation performed under subcontract, the laws make all three parties (the principal, the contractor and the subcontractor) responsible for the payment of assessments except for the British Columbia, Manitoba and New Brunswick Acts which place the liability on both the contractor and the subcontractor.

To ensure that compensation is paid to workers who might otherwise be deprived of it, most of the statutes state that, until the assessment is paid by the contractor or subcontractor, the workers of the contractor or subcontractor are deemed to be the workers of the principal.

All the Acts and Ordinances except that of British Columbia provide for reimbursement of the principal for the amount for which he has been made responsible due to the contractor's or subcontractor's failure to pay the assessment in respect of the contracted or sub-contracted work and, similarly, for recovery by the contractor from the subcontractor of the amount or part of the assessment paid by him with respect to the subcontractor and his workers.

Further, in Ontario and Saskatchewan, a principal, whether under the Act or not, who lets a contract for work that is within the scope of the legislation, has a duty to see that the contractor or subcontractor pays his assessment. If he fails to do so, he is liable for payment. The principal has a right to be indemnified by the person who should have made the payment and may withhold moneys owing to such person for the purpose.

Classification of Industries

For the purpose of assessment, the industries covered by each statute are divided into classes, according to type of business or end product. Classes are usually divided into subclasses, with varying assessment rates. In certain jurisdictions, the classification of industries is included in the legislation, in others, it is the responsibility of the Board. As they may decide from time to time and subject in certain provinces to the approval of the Lieutenant-Governor in Council, the Boards may add new classes, subdivide or rearrange classes or add industries to or withdraw industries from any class.

The Board fixes the assessment rate appropriate for each class or group. The rates reflect directly the cost of accidents but certain other factors must be considered.

Each class or group is a self-sustaining unit on an annual basis and the Board is required to levy upon and collect from the employers in the class or group, sufficient funds to pay for all accidents occurring in such class or group in that year, including funds to provide adequate reserves for the payment of pensions. Each subclass or group has a rate of assessment dependent upon its own accident cost experience. Other factors taken into account in calculating a class or group rate include an estimate of the cost of unsettled claims at the year end, expenses of administration, accident prevention costs and provision for reserve funds and contingencies.

A disaster reserve is provided for the purpose of assisting any class that might otherwise be too heavily burdened in any year by reason of some abnormal loss or catastrophe.

In addition, all jurisdictions maintain a second injury fund to offset increased costs in claims where the injury combines with a pre-existing condition to produce higher than usual costs. Such funds lessen employer resistance to employing handicapped workers and aid in rehabilitation.

Experience Rating

All jurisdictions have provisions for experience rating based on the individual employer's accident cost experience. Where the majority of employers in a class or group favor experience rating, it is applied to the entire group. Boards may also impose experience rating. While the class or group base assessment rate is unchanged, each employer's actual claims cost experience is measured against the average for the group and the individual assessment is adjusted. Employers with claims costs higher than average have their assessment increased while those with lower than average costs obtain a reduction.

Usually a formula is applied which limits the increases to a percentage of the base assessment rate and the reductions balance the increases. Such systems redistribute assessment costs closer to an individual liability type system and, if the variation is severe enough, may have an impact on employer accident prevention activities.

Workers' Compensation Legislation

Federal

Government Employees Compensation Act (R.S.C. 1970, c.G-8 as amended)

Merchant Seamen Compensation Act (R.S.C. 1970, c.M-11 as amended)

Flying Accidents Compensation Regulations (under the Aeronautics Act) (CRC 1978, c.10 as amended)

Penitentiary Inmates Accident Compensation Regulations (SOR/82-385)

Alberta

Workers' Compensation Act (S.A. 1981, c.W-16 as amended)

Blind Workers' Compensation Act (R.S.A. 1980, c.B-7)

British Columbia

Workers' Compensation Act (R.S.B.C. 1979, c.437 as amended)

Manitoba

Workers' Compensation Act (R.S.M. 1970, c.W-200 as amended)

New Brunswick

Workers' Compensation Act (R.S.N.B. 1973, c.W-13 as amended)

Silicosis Compensation Act (R.S.N.B. 1973, c.S-9 as amended)

Blind Workmen's Compensation Act (R.S.N.B. 1973, c.B-6 as amended)

Newfoundland

Workers' Compensation Act (R.S.N. 1970, c.403 as amended)

Blind Workers' Compensation Act (R.S.N. 1970, c.23 as amended)

Employers' Liability Act (R.S.N. 1970, c.110)

Nova Scotia

Workers' Compensation Act (R.S.N.S. 1967, c.343 as amended)

Blind Workmen's Compensation Act (R.S.N.S. 1967, c.24)

Ontario

Workmen's Compensation Act (R.S.O. 1980, c.539 as amended)

Blind Workmen's Compensation Act (R.S.O. 1980, c.45)

Workmen's Compensation Insurance Act (R.S.O. 1980, c.540)

Prince Edward Island

Workers' Compensation Act (R.S.P.E.I. 1974, c.W-10 as amended)

Blind Workmen's Compensation Act (R.S.P.E.I. 1974, c.B-5)

Quebec

Workmen's Compensation Act (R.S.Q. 1977, c.A-3 as amended)

An Act respecting indemnities for victims of asbestosis and silicosis in mines and quarries (R.S.Q. 1977, c.I-7 as amended)

An Act respecting occupational health and safety (S.Q. 1979, c.63 as amended)

Saskatchewan

Workers' Compensation Act, 1979 (S.S. 1979, c.W-17.1 as amended)

Northwest Territories

Workers' Compensation Ordinance (O.N.W.T. 1977(1), c.7 as amended)

Yukon Territory

Workers' Compensation Ordinance (O.Y.T. 1973 (3rd), c.6 as amended)

Workmen's Compensation Supplementary Benefits Ordinance (O.Y.T. 1973 (3rd), c.7)

Addresses of Workers' Compensation Boards

The Workers' Compensation Board,
P.O. Box 2415 (9912-107th St.),
Edmonton, Alberta
T5J 2S5

The Workers' Compensation Board,
5255 Heather Street,
Vancouver, British Columbia
V5Z 3L8

The Workers' Compensation Board,
333 Maryland Street,
Winnipeg, Manitoba
R3G 1M2

The Workers' Compensation Board,
P.O. Box 160 (1 Portland Street),
Saint John, New Brunswick
E2L 3X9

The Workers' Compensation Board,
P.O. Box 9000 (146-148 Forest Road),
St. John's, Newfoundland
A1A 3B8

The Workers' Compensation Board,
P.O. Box 1150 (5668 South St.),
Halifax, Nova Scotia
B3J 2Y2

The Workmen's Compensation Board,
2 Bloor Street East,
Toronto, Ontario
M4W 3C3

The Workers' Compensation Board,
P.O. Box 757 (60 Belvedere Ave.),
Charlottetown, P.E.I.
C1A 7L7

La Commission de la santé et de la
sécurité du travail,
P.O. Box 1200 (524 Bourdages St.),
Quebec City, P.Q.
G1K 7E2

The Workers' Compensation Board,
1840 Lorne Street,
Regina, Saskatchewan
S4P 2L8

The Workers' Compensation Board,
Yellowknife, Northwest Territories
X1A 2L9

The Workers' Compensation Board,
4110 4th Avenue,
Suite 300,
Whitehorse, Yukon Territory
Y1A 4N7

Merchant Seamen Compensation Board,
Labour Canada,
Ottawa, Ontario
K1A 0J2

BENEFITS FOR DEPENDANTS OF DECEASED WORKER

(a) Funeral, Body Transportation, Lump Sum to Widow

Jurisdiction	Funeral Maximum	Transportation of Body Maximum	Widow Lump Sum
Alberta	\$1 350	\$450	\$1 100 ¹
British Columbia	\$1 269.66 plus \$423.24 plot or cremation	\$423.24 (only expenses within province allowed)	\$1 058.11 ²
Manitoba	\$300 plus \$50 plot or cremation	Necessary expenses; in Board's discretion part of expenses into or outside province	\$1 050 ¹
New Brunswick	\$775	Necessary expenses within Canada	
Newfoundland	\$1 000	Necessary expenses	min. \$15 912 max. \$39 375 ¹
Nova Scotia	\$750	\$300	\$1 000 ¹
Ontario	\$1 200	Necessary expenses	\$1 200 ^{1,2}
Prince Edward Island	\$500	\$100	\$500 ¹
Quebec	\$600	\$500	\$500 ^{1,2}
Saskatchewan	Included in lump sum	Necessary expenses within Canada	\$1 000
Northwest Territories	\$928	Necessary expenses within Territories	\$928 ¹

(a) Funeral, Body Transportation, Lump Sum to Widow (Continued)

Jurisdiction	Funeral Maximum	Transportation of Body Maximum	Widow Lump Sum
Yukon Territory	\$1 261	\$223	\$1 101 ¹
Federal			
(1) Merchant Seamen	\$700	\$125	\$750 ²
(2) Inmates	\$500	\$100	\$500 ¹

¹Widower dependent on deceased wife's earnings eligible for same benefits as widow (only invalid dependent widower eligible in Nfld.)

²In case no spouse is surviving, foster mother eligible for lump sum (or common-law wife in B.C.); in Quebec, dependants share lump sum.

Note: Abbreviations (not all standard) - acc., accident; amt., amount; av., average; circs., circumstances; diff., differences; ea., each; equ., equivalent; ex., exceeding; FB, federal benefits under the Canada Pension Plan; inc., included; max., maximum; min., minimum; m., monthly; prop., proportion, proportionate; PTD, permanent total disability; TTD, temporary total disability; w., weekly.

(b) Monthly Benefits

Jurisdiction	Widow ^{1, 4}	Child with Parent	Orphan Child	Only Dependents Other Than Widow and Child	Maximum
Alberta	Full PTD pension min. \$675 m. ⁹	At Board's discretion \$139 m. if under 18 and not residing with parent	Under 18, full PTD pension paid to guardian ² plus amt. not ex. \$66 m. at Board's discretion	As Nfld. Max. PTD pension	
British Columbia	Prop. PTD pension ⁵	Under 18 beyond 2 in number, \$137.52 ^{2, 5} m.	Under 18 Prop. PTD pension ^{2, 6}	As Nfld. Max. to dependants \$243.34 m. If spouse or child max. to parents \$243.34 m. Max. to partially dependent parent(s) \$243.34 m. at Board's discretion	
Manitoba	Full PTD pension Min. \$475 m.	If spouse chooses to receive \$475 m. plus amt. for children: Under 16 \$107 m. Over 16 at school \$119 m. ²	Under 16 \$119 m. Over 16 at school 131 ² m.	As Nfld. Max. to wholly dependent mother \$475 m. Other dependants Max. \$30 m. ea. Max. in all \$60 m.	75% av. earnings ³ Min. \$475 m. to spouse; plus amt. payable for child to spouse with one or plus amt. payable for two eldest children, to spouse with two or more

(b) Monthly Benefits (Continued)

Jurisdiction	Widow ^{1, 4}	Child with Parent	Orphan Child	Only Dependents Other Than Widow and Child	Maximum
New Brunswick	80% worker's av. net earnings ¹⁰		Under 18: \$129.17 m., \$161.46 m. or \$193.75 m. according to age ²	As Nfld.	90% estimated loss of net earnings
Newfoundland	75% TTD pension ¹¹ If children under 16: min. \$410 m. plus \$95 each	16 or over \$100 m. at Board's discretion ²	Information on allowance not yet available	Reasonable sum determined by Board prop. to pecuniary loss so long as Board considers worker would have contributed to support	
Nova Scotia	\$476 m.	Under 18 \$124 ² m.	Under 18 \$124 ² m.	As Nfld. Max. to dependant \$151 m. Max. in all \$198 m.	
Ontario	\$492 m.	Under 16 \$136 ² m.	Under 16 \$153 ² m.	As Nfld. Max. \$492 m.	
Prince Edward Island	\$350 m.	Under 16 \$75 ² m.	Under 16 \$90 ² m.	As Nfld. Max. to parent(s) \$40 m. Max. in all \$60 m.	75% av. earnings Board may waive where cjrcs. require
Quebec	After 1/1/79 prop. PTD pension, Min. \$333.21 m.; \$419.87 m. if one child; \$506.53 m. if more than one child	Under 18 After 1/1/79 prop. PTD pension ^{2, 7}	Under 18 After 1/1/79 prop. PTD pension ^{2, 7}	After 1/1/79 prop. PTD pension	80% of PTD pension. Does not apply to min. mentioned in column 2

(b) Monthly Benefits (Continued)

Jurisdiction	Widow ^{1, 4}	Child with Parent	Orphan Child	Only Dependents Other Than Widow and Child	Maximum
Saskatchewan	Full PTD pension ⁸ Min. \$580 m. or \$530 if 65 or over		Under 16 \$135 m. plus sum at Board's discretion ²	As Nfld.	75% of estimated loss of earnings
Northwest Territories	\$638 m.	Under 16 \$145 ² m.	Under 16 at Board's discretion Max. in all \$638 ² m.	As Nfld. Max. \$638 m.	
Yukon Territory	\$438 m.	Under 16 \$144 m. Invalid child \$167 ² m.	Under 18 \$144 m. Invalid child \$167 ² m. plus discretionary \$20	Max. to parent(s) determined by Board	
Federal (1) Merchant Seamen	\$375 m. if sole dependent Min. \$460 m. when one or more children	Under 18 \$85 ² m.	Under 18 \$95 ² m.	As Nfld.	75% of av. earnings; ³ av. earnings if widow sole dependant or has more than one child ¹
(2) Inmates	\$300 m.	Under 16 \$60 ² m.	Under 16 \$75 ² m.		75% of monthly (175 hrs.) min. wage paid to persons 17 or over

(b) Monthly Benefits (Continued)

¹Widower (in B.C., Nfld. and for Fed.(1) only an invalid widower) dependent on his deceased wife's earnings eligible for same benefits as widow. Where there is no surviving dependent spouse, a dependent common-law wife (and husband in Alta., Man., Ont., P.E.I., Sask., NWT., and for Fed. (2)) may be eligible to same benefits as widow; in Ontario common-law wife eligible after having cohabited 6 years (2 with one child or more), in Alberta and P.E.I. 5(2), British Columbia and the Northwest Territories 3(1), Saskatchewan 2, Manitoba 3, Nova Scotia 7(1), Newfoundland 7(2), for Fed. (2) 6(2) and in the Yukon 3 (immediately preceding death if one child or more). In Quebec, common-law spouse eligible to benefits after 3 years of cohabitation (1 if a child is born).

²Payments to children may be made at Board's discretion, if desirable for a child to continue his education, up to age 18 in the Yukon, to 21 in British Columbia, Nova Scotia, New Brunswick, Newfoundland, Prince Edward Island, Saskatchewan and for Fed. (1) and (2); until the child is granted a university degree or completes a course in technical training in Manitoba and in the Northwest Territories; and as long as the child is pursuing his studies in Ontario. In Newfoundland, Prince Edward Island and the Yukon, payments to invalid children (in Quebec, to invalid children and students over 18) are continued so long as the Board considers the worker would have contributed to the child's support; in other jurisdictions, payments to invalid children are continued until recovery. In Alberta, when the youngest child reaches 18 years of age, a decreasing 5-year term pension is divided among those children who were under that age at the time of the worker's death.

³For maximum annual earnings on which compensation may be based, see Disability Benefits Tables, column 6.

⁴Marriage of widow(er) receiving benefits: lump sum equal to two years in British Columbia, Ontario and for Fed. (1); the lesser of two years or number of months remaining in the five year period of pension in Saskatchewan; one year in New Brunswick, Newfoundland, the Northwest Territories and for Fed. (2); \$3 600 in Manitoba; \$5 515 in the Yukon; \$2 443 in Nova Scotia and in Prince Edward Island \$350 for 12 months, in each province one total payment is available. The dependent widow or widower continues to receive payments in respect of a child. In New Brunswick, the above also applies in cases of cohabitation when another person has a legal obligation to support the spouse. In Quebec, a spouse loses the right to compensation in case of remarriage or cohabitation for 3 years (1 if a child is born) and a period of 5 years has elapsed since the death.

⁵B.C. system of compensation for deaths occurring on or after July 1, 1974, though the injury that caused the death may have occurred earlier: widow or invalid widower with two or more children: PTD pension (FB inc.) plus \$137.52 m. for each child beyond two. Widow or invalid widower with one child: 85% of PTD pension (FB inc.). Widow of 50 years or over at the date of death or an invalid spouse: 60% of PTD pension (FB inc.) min. \$444.35 m. Where there are no dependent children: widow under 40 years at the date of death not invalid and widower not invalid: a capital sum of \$21 161.43; widow not invalid between 40 and 50 years at the date of death: a minimum of \$444.35 m. plus a proportion according to age of the difference between this amount and 60% of PTD pension.

⁶Benefits to orphans for deaths occurring on or after July 1, 1974: one child, 40% PTD pension (FB inc.); two children 50% PTD pension (FB inc.); three or more children, 60% PTD pension plus \$137.52 m. for each child beyond three in number (FB inc.).

⁷Quebec system of compensation for deaths occurring on or after January 1, 1979: to the surviving spouse and to other dependants or, if there is no surviving spouse, to the dependants, in equal portions, 55% of PTD pension when there is one dependant, 65% for two dependants and an additional 5% for each dependant beyond two up to a maximum of 80%. If there are persons totally and others partially dependent, the Commission may allow to each a part of the compensation that is proportionate to the pecuniary loss. The surviving spouse under 35 and the spouse who is separated, divorced or whose marriage has been cancelled by a judgment of the court and who, at the time of the accident, was entitled to receive alimony from the worker, is no longer considered to be a dependant 5 years after the worker's death when this person is without children and is not an invalid.

⁸Compensation is paid for a period of five years or until remarriage, whichever occurs first. However, compensation is extended until the youngest dependent child of the deceased worker is 16. Also, the payment of benefits may continue beyond five years where the Board believes that an undue hardship would otherwise exist.

⁹The pension is paid to a dependent spouse having dependent children until the youngest dependent child reaches the age of 18, at which time a decreasing 5-year term pension is payable; benefits may be extended if the spouse is unemployed. If there are no dependent children, the 5-year decreasing pension is paid unless the spouse is unemployed and accepts vocational rehabilitation in which case, the full pension is paid for a certain period of time before the term pension takes effect. Special pensions may be paid to those partially self-sufficient and those who cannot gain employment because of age or infirmity.

¹⁰The pension is payable up to age 65. Adjustments are made when the spouse is earning an independent income.

¹¹For spouses of 35 years or under, a pension is only payable if there is a dependent child and it stops when the youngest child reaches age 16. For spouses who are older or invalid, payments continue until age 65 unless a prolongation is granted; they are reduced if the spouse is under 50 and does not have a dependent child.

January 1, 1982.

DISABILITY BENEFITS

Jurisdiction	Permanent Total	Permanent Partial	Temporary Total	Temporary Partial	Annual Earnings Ceiling
Alberta	90% av. net. earnings ⁶ Min. \$675 m.	Prop. of 90% av. net. earnings based on impaired capacity ⁶ Min. Prop. of PTD	90% av. net. earnings paid bi-w. ⁶ or av. net earnings, if they are less than \$675 m.	Prop. of 90% av. net earnings based on impaired capacity ⁶	\$40 000
British Columbia	75% earnings Min. \$687.78 m.	Prop. of 75% earnings based on impaired capacity ^{1, 2, 3}	75% earnings Min. \$158.71 w. or earnings, if less	75% diff. in earnings before and after ^{2, 3} accident ^{2, 3}	\$24 700
Manitoba	75% earnings Min. \$475 m. or earnings, if less	Amt. determined by Board, not ex. 75% earnings ^{2, 3} Board may pay more under certain conditions	75% earnings Min. \$475 m. or earnings, if less	75% diff. in earnings before and after accident or based on impaired capacity ²	\$23 000
New Brunswick	90% estimated loss of net earnings ⁵	90% estimated loss of net earnings ⁵	90% estimated loss of net earnings	90% estimated loss of net earnings	\$23 200

DISABILITY BENEFITS (Continued)

Jurisdiction	Permanent Total	Permanent Partial	Temporary Total	Temporary Partial	Annual Earnings Ceiling
Newfoundland	75% earnings Min. \$530.40 m. When children would be eli- gible, not less than what would be paid to widow	Prop. of 75% earnings based on impaired capacity ^{1,2} Min. Prop. of PTD	75% earnings Min. \$122.40 w. or earnings, if less	Prop. of 75% earnings based on impaired capacity ^{1,2,3} ,	\$21 000
Nova Scotia	75% earnings Min. \$476 m. When more than one eligible child, \$124 m. for each	75% diff. in earnings before and after accident or prop. of 75% earnings based on impaired capacity ²	75% earnings Min. \$99 w. or earnings, if less	75% diff. in earnings before and after accident ^{2,3}	\$19 000
Ontario	75% earnings Min. \$686 m. Not less than what would be paid to widow and/or children	Prop. of 75% earnings based on impaired capacity ^{1,2} Min. Prop. of \$686 m.	75% earnings Min. \$156 w. or earnings, if less	75% diff. in earnings before and after accident. Under certain circs. as TTD ^{2,3}	\$22 200
Prince Edward Island	75% earnings Min. \$60 w. or earnings, if less	75% diff. in earnings before and after accident ^{2,3}	75% earnings Min. \$60 w. or earnings, if less	75% diff. in earnings before and after accident or based on impaired capacity ^{2,3}	\$16 000 (1/7/82) \$17 000 (1/1/83)
Quebec	90% net earnings Min. \$35 w. or earnings, if less ⁴	Prop. of 90% net earnings based on impaired capacity ^{2,3,4}	90% net earnings Min. \$35 w. or earnings, if less	Prop. of 90% net earnings based on impaired capacity ^{2,3}	\$26 000

DISABILITY BENEFITS (Continued)

Jurisdiction	Permanent Total	Permanent Partial	Temporary Total	Temporary Partial	Annual Earnings Ceiling
Saskatchewan	75% estimated loss of earnings Min. \$580 m. or earnings if less ⁵	75% estimated loss of earnings ⁵ After 2 years min. av. earnings deemed to be \$178.48 w.	75% estimated loss of earnings Min. \$580 m. or earnings if less	75% estimated loss of earnings	\$26 000
Northwest Territories	75% av. earnings Min. \$638 m. or earnings, if less ²	Prop. of 75% earnings based on impaired capacity ^{2, 3}	75% av. earnings Min. \$638 m. or earnings, if less	Prop. of 75% earnings based on impaired capacity ^{2, 3}	\$23 200
Yukon Territory	75% av. earnings Min. \$104 w. or earnings, if less	Prop. of 75% earnings based on impaired capacity ²	75% earnings Min. \$104 w. or earnings, if less	Prop. of 75% earnings based on impaired capacity ²	\$24 000
Federal (1) Merchant Seamen	75% av. earnings Min. \$90 w. or earnings, if less	Prop. of 75% earnings based on impaired capacity ^{1, 2, 3}	75% av. earnings Min. \$90 w. or earnings, if less	Prop. of 75% earnings based on impaired capacity ^{1, 2, 3}	\$20 000
(2) Inmates	Sum prop. to impairment of capacity as determined by Solicitor General	As permanent total ²	As permanent total	As permanent total ²	Maximum com- pensation 75% of monthly (175 hrs) min. wage paid to persons 17 or over

DISABILITY BENEFITS (Continued)

- ¹The Act also permits the use of the wage-loss method in calculating compensation. Under this method, compensation is 75 per cent of the difference in the average earnings of the worker before and after the accident.
- ²If earning capacity is diminished 10 per cent or less, in Quebec if the pension is \$80.71 m. or less, a lump sum may be given.
- ³The minimum payable in case of partial disability is the same proportion of the minimum for total disability (see column 4).
- ⁴For disability resulting from silicosis or asbestosis: a fixed indemnity in proportion to age and degree of permanent disability, and if the worker ceases to be employed by reason of such permanent disability, a complementary indemnity of 90% of his disposable net income (other pensions inc.); for the purpose of calculating the complementary indemnity, the worker's gross annual income cannot exceed the annual earnings ceiling (see column 6). If new employment is obtained, the complementary indemnity is reduced.
- ⁵For permanent functional impairment, a lump sum is paid based on the degree of impairment. It is ranging from \$500 to \$15 000 in Saskatchewan and from \$500 to the annual earnings ceiling in New Brunswick.
- ⁶For the first 30-day period of disablement, compensation is based on actual net earnings at the time of the accident if this is more favourable to the worker.

